

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 1:11-CV-1226
)	
v.)	
)	
CHARLES DUNLEVY, individually)	
)	
Defendant.)	
)	
)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) against Defendant Charles Dunlevy, alleging deceptive acts or practices and false advertisements in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

Defendant has consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) without a trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, the Plaintiff and Defendant, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Commission has the authority to seek the relief contained herein.
2. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a), 12 and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 52 and 53(b).
3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendant.
4. Venue in the United States District Court for the Northern District of Georgia is proper pursuant to 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
5. The alleged activities of Defendant are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendant, without admitting the allegations set forth in the Commission's Complaint, with the exception of venue and jurisdictional facts, and

without any admission or finding of liability thereunder, agrees to entry of this Order.

7. Defendant waives: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that he may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended* by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Defendant shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

9. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. **“Acai Berry Product” or “Acai Berry Products”** mean any Dietary Supplement, Food, or Drug, sold alone or in combination with companion products, that is advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains acai berries or the extract thereof.

2. **“Adequate and Well-Controlled Human Clinical Study”** means a human clinical study that is randomized, double-blind, placebo-controlled, and conducted by persons qualified by training and experience to conduct such a study.

3. **“Assisting Others”** includes, but is not limited to: (a) arranging for the dissemination or publication of advertisements; (b) assisting in the formulation, drafting, or revision of advertisements; (c) creating, hosting, or maintaining websites; (d) recruiting third parties to advertise or market products, services, or programs; (e) obtaining or generating customer leads; (f) performing or providing marketing, billing, or collection services of any kind; (g) verifying, processing, fulfilling, or arranging for the fulfillment of orders; or (h) acting as an officer or director of a business entity.

4. **“Clearly and Prominently”** shall mean: (a) in textual communications (e.g., printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear; (b) in communications disseminated orally or through audible means (e.g., radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them; (c) in communications

disseminated through video means (e.g., television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them; (d) in communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and (e) in all instances, the required disclosures are presented in an understandable language and syntax, in the same language as the predominant language that is used in the communication, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

5. **Defendant**” means Charles Dunlevy, by whatever name he may be known.

6. **“Device”** means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is: (a) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them; (b) intended for use in the diagnosis of disease or other conditions, or in the cure,

mitigation, treatment, or prevention of disease, in man or other animals; or (c) intended to affect the structure or any function of the body of man or other animals; and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

7. **“Dietary Supplement”** means: (a) any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or (b) any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that are a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above that is intended to be ingested, and is not represented to be used as a conventional Food or as a sole item of a meal or the diet.

8. **“Document” or “Documents”** means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary,

into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

9. **“Drug”** means: (a) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than Food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any article specified in clause (a), (b), or (c); but does not include Devices or their components, parts, or accessories.

10. **“Endorsement”** means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser.

11. **“Essentially Equivalent Product”** means a product that contains the identical ingredients, except for inactive ingredients (*e.g.*, binders, colors, fillers, excipients), in the same form and dosage, and with the same route of

administration (*e.g.*, orally, sublingually), as the Dietary Supplement, Food, or Drug; *provided that* the Dietary Supplement, Food, or Drug may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients are unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

12. **“Food”** means: (a) articles used for food or drink for man or other animals; (b) chewing gum; and (c) articles used for components of any such article.

13. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

14. **“Material connection”** means any relationship that materially affects the weight or credibility of any endorsement and that would not reasonably be expected by consumers.

15. **“Net Proceeds”** shall mean any sum remaining after satisfaction of senior recorded liens, and after payment to third parties of reasonable and customary fees, commissions and closing costs.

16. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability

company, association, cooperative, or any other group or combination acting as an entity.

17. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendant and his officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or Assisting Others in misrepresenting, any material fact, expressly or by implication, including, but not limited to:

1. That any website or other publication is an objective news report;
2. That objective news reporters have performed independent tests of any product, service, or program, including but not limited to Acai Berry

Products or any other Dietary Supplement, Food, Drug, Device, work-at-home programs, surplus auction services, teeth whitening products or skin care products.

3. That independent tests demonstrate the effectiveness of any product, service, or program featured in any website or other publication, including but not limited to, Acai Berry Products or any other Dietary Supplement, Food, Drug, Device, dating services, work-at-home programs, surplus auction services, teeth whitening products or skin care products.;

4. That comments posted on websites express the views of independent consumers;

5. The total cost to purchase, receive, or use the product, service, or program;

6. Any material restrictions, limitations, or conditions to purchase, receive, or use the product, service, or program;

7. Any material aspect of the performance, efficacy, nature, or central characteristics of the product, service, or program; and

8. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the product, service, or program; and

B. Failing to disclose, Clearly and Prominently:

1. Any material connection, when one exists, between any user or endorser of any product, service, or program and Defendant or any other person manufacturing, advertising, labeling, promoting, offering for sale, selling or distributing such product, service, or program; and

2. If applicable, that the content of any website or other publication has not been authored by an objective journalist but is in fact an advertisement placed for compensation.

II.

PROHIBITED REPRESENTATIONS: WEIGHT LOSS CLAIMS

IT IS FURTHER ORDERED that Defendant, and his officers, agents, servants, employees and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, or Drug, is hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, any representation that such product:

- A. Causes or helps cause weight loss;
- B. Causes or helps cause rapid weight loss; or
- C. Causes or helps cause substantial weight loss;

unless the representation is non-misleading and, at the time of making such representation, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of this Section, competent and reliable scientific evidence shall consist of at least two Adequate and Well-Controlled Human Clinical Studies of any Dietary Supplement, Food, or Drug, or of an Essentially Equivalent Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true. Defendant shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

III.

PROHIBITED REPRESENTATIONS: OTHER HEALTH-RELATED CLAIMS

IT IS FURTHER ORDERED that Defendant, and his officers, agents, servants, employees, and attorneys, and all other Persons in active concert or

participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, Drug, or Device, is hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, any representation, other than representations covered under Section II of this Order for any Dietary Supplement, Food, or Drug, about the health benefits, performance, or efficacy of any Dietary Supplement, Food, Drug, or Device, unless the representation is non-misleading, and, at the time of making such representation, Defendant possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

IV.

**PROHIBITED REPRESENTATIONS:
NON-HEALTH-RELATED CLAIMS**

IT IS FURTHER ORDERED that Defendant, and his officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program that is *not* a Dietary Supplement, Food, Drug, or Device, is hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation regarding the benefits, performance, or efficacy of any products, services, or programs, unless the representation is true, not misleading, and, at the time it is made, Defendant possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this Section, competent and reliable evidence means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and

evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

V.

PROHIBITED REPRESENTATIONS: TESTS OR STUDIES

IT IS FURTHER ORDERED that Defendant, and his officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary Supplement, Food, Drug, or Device, or any other product, service, or program, in or affecting commerce, is hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product name or Endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, in connection with any representations covered by Sections I, II, III, and IV of this Order.

VI.

FDA APPROVED CLAIMS

IT IS FURTHER ORDERED that nothing in this Order shall prohibit Defendant from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VII.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Defendant, in the amount of One Hundred Forty-Three Thousand dollars (\$143,000.00). Except as provided in Section VIII entitled "Right To Reopen," the judgment shall be suspended as to Defendant upon satisfaction of the following conditions:

1. Within seven days of the date of entry of this Order, Defendant shall take all reasonable and necessary steps to cause PNC Bank to transfer the balance of Defendant's account ending in 7762 to the Commission by wire transfer in accordance with directions provided by a representative of

the Commission, or in such other manner as agreed to by the representative. Funds held in any other bank account of Defendant shall be transferred in a similar manner.

2. Defendant shall take all reasonable and necessary steps to assist in the sale of Motor Boat described as a 1983 Dynatrac UNK. Upon entry of the Final Order, Defendant shall immediately sell and relinquish all rights, title and interest in said Motor Boat in a manner designated by a representative of the FTC. Within ten (10) business days of the sale of the Motor Boat, Defendant shall pay to the FTC, by wire transfer, the Net Proceeds of the sale, auction, or other transfer of the Motor Boat, in accordance with directions provided by a representative of the FTC, or in such other manner as agreed to by the FTC's representative.

3. Within ten (10) business days of the transfer of any interest in Motor Boat, Defendant shall provide counsel for the FTC with: (a) proof of such transfers, including the amount paid by the purchaser for said Motor Boat; and (b) proof of all payments by Defendant of any fees, commissions, closing costs, and any other charges or other payments.

4. All funds paid pursuant to this Order shall be deposited into a

fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer restitution, and any attendant expenses for the administration of such equitable relief fund. If the Commission determines, in its sole discretion, that restitution to consumers is wholly or partially impracticable or funds remain after consumer restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section, and shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

B. In the event of any default on Defendant's obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue from the date of default to the date of payment, and shall immediately become due and payable.

C. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. Time is of the essence for the payments specified above. In the event of default by Defendant on any obligation imposed under this Section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment and the entire amount shall immediately become due and payable.

E. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. Defendant shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States

Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Section. Defendant shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

F. In accordance with 31 U.S.C. § 7701, as amended, Defendant is hereby required, unless he already has done so, to furnish to the Commission his respective taxpayer identifying social security number or employer identification number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government. Defendant is further required, unless he has already done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes;

G. Defendant agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant further

stipulates and agrees that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

H. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VIII.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's financial condition, as represented in the Financial Statements signed by Defendant and dated April 21, 2011, and the sworn statement made on August 30, 2011.

B. If, upon motion of the FTC, the Court finds that Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission from such Defendant's Financial Statement, the Court shall lift the suspension of the judgment in Section VII and the entire judgment amount, less the sum of transfers previously made,

shall become immediately due and payable. *Provided, however,* that in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court.

C. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

IX.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant shall appear and provide truthful testimony in any trial, deposition, or other

proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

X.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant obtains acknowledgments of receipt of this Order:

A. Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant, for any business that Defendant is the majority owner or directly or indirectly controls, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled "Compliance Reporting." Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant makes timely submissions to the Commission:

- A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury.
1. Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest; and (c) describe in detail Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.
 2. Defendant must: (a) designate at least one telephone number and an

email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment, unless previously submitted to the Commission;

B. For 20 years following entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

2. Defendant must report any change in: (a) any designated point

of contact; or (b) the structure of any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal

Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Charles Dunlevy*, Matter No. X 110030.

XII.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 20 years after entry of the Order, and to retain each such record for 5 years. Specifically, Defendant for any business in which Defendant is a majority owner or directly or indirectly controls, must maintain the following records:

A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Customer files showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;

D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

F. A copy of each advertisement or other marketing material.

XIII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order, including any failure to transfer any assets as required by this Order and the financial representations upon which part of the judgment was suspended:

A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to

communicate directly with Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XIV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

Dated: January 12, 2012

Thomas W. Thrash
Thomas W. Thrash
United States District Court Judge

SO STIPULATED AND AGREED:

FOR THE PLAINTIFF:

Robin L. Rock

Date: January 11, 2012

ROBIN L. ROCK, GA Bar No. 632529
225 Peachtree St., NE, Suite 1500
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Federal Trade Commission

FOR THE DEFENDANT:

Ch. T. Dunlevy
CHARLES DUNLEVY
Pro se Defendant

Date: 8/30/11